

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #3	CCRB Case #: 201600593	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/14/2016 7:00 PM, Saturday, 01/16/2016	Location of Incident: 1470 East New York Avenue (73 PCT SH)	Precinct: 73	18 Mo. SOL 7/14/2017	EO SOL 7/14/2017	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 01/22/2016 11:04 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christian Diaz	17665	943165	073 PCT
2. An officer			
3. POM Christopher Coopersmith	28488	953777	073 PCT
4. SDS Eric Francis	01705	933784	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Hugo Ortega	03534	935438	NARCBBN
2. SGT Scott Haug	00730	920178	073 PCT
3. POM Jose Vega	05334	954398	073 PCT
4. POM Jonathan Aquino	15569	957337	073 PCT
5. POM Stephen Greco	10086	956697	073 PCT
6. SGT Yancy Blowe	02316	932134	073 PCT
7. POM Louis Aponte	07454	957850	073 PCT
8. POF Delilah Beniquez	11690	956428	073 PCT
9. POM Michael Deninno	26464	945660	073 PCT
10. DT3 Jason Nino	02790	937188	NARCBBN
11. DT3 Gabriel Nacelewicz	06511	942255	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.SDS Eric Francis	Force: On January 14, 2016, Sergeant Eric Francis used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
B.SDS Eric Francis	Abuse: On January 14, 2016, Sergeant Eric Francis threatened § 87(2)(b) with the use of force.	
C. An officer	Abuse: On January 14, 2016, an officer threatened § 87(2)(b) with the use of force.	
D. An officer	Discourtesy: On January 14, 2016, an officer spoke discourteously to § 87(2)(b)	
E.POM Christian Diaz	Force: On January 14, 2016, Police Officer Christian Diaz used physical force against § 87(2)(b)	
F.POM Christian Diaz	Force: On January 14, 2016, Police Officer Christian Diaz used physical force against § 87(2)(b)	
G.POM Christopher Coopersmith	Force: On January 16, 2016, Police Officer Christopher Coopersmith used physical force against § 87(2)(b)	

## Case Summary

On January 14, 2016, Sgt. Scott Haug of the 73<sup>rd</sup> Precinct filed this complaint on behalf of § 87(2)(b) with IAB, generating log #16-1607. The complaint was received at the CCRB on January 22, 2016. On January 16, 2016, § 87(2)(b) filed a complaint with IAB in regards to the incident that occurred to him on that day at the 73<sup>rd</sup> Precinct stationhouse, generating log #16-1773. The undersigned received § 87(2)(b)'s complaint on January 25, 2016, which was combined with Sgt. Haug's complaint under the current case number on January 26, 2016.

On January 14, 2016, at 6:40 p.m., PO Christian Diaz, Sgt. Yancy Blowe, PO Delilah Beniquez and PO Michael Deninno of the 73<sup>rd</sup> Precinct arrested § 87(2)(b) who was transported to the 73<sup>rd</sup> Precinct stationhouse by PO Beniquez and PO Deninno. Ten minutes earlier, Sgt. Eric Francis, Det. Hugo Ortega, Det. Jason Nino and Det. Gabriel Nacelewicz of Narcotics Borough Brooklyn North brought in five prisoners to the 73<sup>rd</sup> Precinct stationhouse. At the stationhouse, § 87(2)(b) was taken to the cell attendant's desk where he was searched and his belt was removed, allegedly causing § 87(2)(b)'s pants and underwear to fall to the floor. After § 87(2)(b) was searched, Sgt. Francis allegedly pushed § 87(2)(b) against the wall and told him, "If you move, you gonna hit the ground hard. We know about you, you wanna fight, you wanna fight? We know you're a tough guy" (**Allegations A and B**). § 87(2)(b) was placed in a cell by himself bare from the waist down and rear cuffed. § 87(2)(b) who was arrested earlier that day, was already in the cells at the time. Additionally, § 87(2)(b) and § 87(2)(b) who were brought in by the abovementioned officers from NARCBBN, were also lodged in the cells. At some point, § 87(2)(b) called to be moved from his cell as the toilet had flooded and Det. Nacelewicz and an unidentified plain clothes officer moved § 87(2)(b) to the cell with § 87(2)(b) and § 87(2)(b). During this transfer, one of the officers allegedly told § 87(2)(b) "I am gonna fuck you up" (**Allegations C and D**). § 87(2)(b) and § 87(2)(b) started complaining that they did not wish to be in the cell with § 87(2)(b) since he was undressed. As a result, PO Diaz went to the cells again. PO Diaz took § 87(2)(b) out of the cell to the cells hallway. There PO Diaz tripped § 87(2)(b) to his left, which caused him to fall face down to the floor (**Allegation E**). Next, PO Diaz punched § 87(2)(b) to his head two to three times (**Allegation E continued**). As a result, § 87(2)(b) sustained injuries to his lip, chin and teeth. After that, PO Diaz dragged § 87(2)(b) to the sergeant's desk (**Allegation F**). Sgt. Haug called the EMS and § 87(2)(b) was taken to § 87(2)(b) accompanied by PO Stephen Greco and PO Edmund Mays of the 73<sup>rd</sup> Precinct. § 87(2)(b) was released from the hospital on § 87(2)(b).

On January 16, 2016, at approximately 8:00 a.m., § 87(2)(b) returned to the 73<sup>rd</sup> Precinct stationhouse to retrieve his belongings. PO Christopher Coopersmith took § 87(2)(b)'s identification and requested PO Jose Vega check § 87(2)(b)'s voucher in the computer. Upon checking the database, PO Vega learned that § 87(2)(b)'s property was vouchered for safekeeping, but PO Diaz made a note in the voucher's body that the property was vouchered as arrest evidence. As a result, PO Coopersmith instructed § 87(2)(b) to return to the stationhouse and talk to PO Diaz since he could not release his property to him. § 87(2)(b) became upset, and PO Coopersmith allegedly pushed § 87(2)(b) in his chest and instructed him to leave the stationhouse (**Allegation G**). § 87(2)(b) left the

stationhouse, called IAB and returned to the precinct stationhouse. After § 87(2)(b) returned, Sgt. Haug, the desk sergeant, authorized PO Vega to return § 87(2)(b) his belongings. § 87(2)(b) received his property and left.

There is no video recording of the incident.

§ 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- As the incident resulted in an arrest and injuries, the case is not suitable for mediation.
- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 19, 2016 with regard to the incident [BR 35].

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has four previous CCRB complaints. § 87(2)(b)
- Sgt. Francis has been a member of the service for 12 years and has eight previous CCRB complaints filed against him containing eight allegations. In case #201501960, Sgt. Francis has one substantiated premises entered allegation with command discipline B recommended as a penalty. As of yet, the NYPD has taken no disciplinary action in regards. Sgt. Francis has three previous force allegations that were closed as exonerated, complaint withdrawn and complainant uncooperative, respectively. In case #201114363, it is alleged that Sgt. Francis threw the victim to the ground without saying anything and punched the individual in the mouth. § 87(2)(g)
- PO Diaz has been a member of the service for nine years and has two previous CCRB complaints containing two allegations, none of which were substantiated.
- PO Coopersmith has been a member of the service for three years § 87(2)(b)

### **Potential Issues**

The undersigned was not able to obtain a verified statement from any of the civilian witnesses. § 87(2)(b) missed three in-person interviews scheduled for March 11, March 21, and March 22, 2016 without previously calling the undersigned to cancel or reschedule. On April 1, 2016, the undersigned called § 87(2)(b) and the phone call was disconnected. On April 5, 2016, one of the letters mailed to § 87(2)(b) was returned with a note stating the address was

undeliverable. On May 13, 2016, the investigator called § 87(2)(b) who could not accept calls at the time and mailed another letter. Two additional calls were made to § 87(2)(b) on May 16 and May 26, 2016 and the phone number continued to be unable to receive any calls. Lexis/Nexis and Clear searches conducted on May 13, 2016 revealed two additional potential phone numbers for § 87(2)(b). It was determined that one phone number did not belong to § 87(2)(b). Three phone calls were made to the second phone number on May 13, May 16 and May 26, 2016, which remained not in service the entire time. Two more letters were mailed to § 87(2)(b) on May 19 and May 25, 2016. On June 6, 2016, two other letters mailed to § 87(2)(b) were returned with notes that the address was undeliverable. On May 13, 2016, a search of the DOC for NYC database showed § 87(2)(b) is not incarcerated. To date, § 87(2)(b) has not responded to these contact attempts.

A Lexis/Nexis search revealed one possible phone number for § 87(2)(b). Sgt. Luke Gasquez of IAB provided § 87(2)(b)'s address to the undersigned. Seven phone calls were made to § 87(2)(b) between February 26 and March 14, 2016, and the number remained not in service the entire time. BADS search conducted on February 29, 2016 revealed no additional phone numbers for § 87(2)(b). Additionally, four please call letters were mailed to § 87(2)(b) between February 24 and March 14, 2016. Two of these letters were returned by USPS. On March 10, 2016, a search of the DOC for NYC database showed § 87(2)(b) is not incarcerated.

A Lexis/Nexis search revealed two possible phone numbers for § 87(2)(b) and his address was obtained from Sgt. Gasquez. The first phone number belonged to an individual named § 87(2)(b) who stated he resided at a different address and did not witness any incidents at the 73<sup>rd</sup> Precinct stationhouse. Seven phone calls were placed to the second phone number between February 26 and March 14, 2016, which rang continuously without an option to leave a voice message each time. BADS search conducted on February 29, 2016 revealed no additional phone numbers for § 87(2)(b). Four please call letters were mailed to § 87(2)(b) between February 24 and March 14, 2016. One of these letters was returned with a note that premises were vacant. On March 10, 2016, a search of the DOC for NYC database showed § 87(2)(b) is not incarcerated.

BADS search conducted on February 29, 2016 revealed one phone number and address for § 87(2)(b). Five phone calls were placed to § 87(2)(b) between February 29 and March 9, 2016, and the phone number remained not in service each time except for March 9, 2016, when it rang continuously without an option to leave a voice message. Three please call letters were mailed to § 87(2)(b) on February 29, March 7 and March 14, 2016. All three letters were returned by USPS. On June 3, 2016, a search of the DOC for NYC database showed § 87(2)(b) is not incarcerated.

Additionally, the undersigned was unable to obtain the case file for Sgt. Gasquez's IAB investigation into the incident since his investigation is still on-going. A request for it was submitted and will be included in the case file upon receipt. A request to provide § 87(2)(b)'s sealed arrest report and arrest photo submitted to IAB is still pending.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(b) alleged that while he was being searched and his pedigree was taken at the 73<sup>rd</sup> Precinct stationhouse, a plainclothes officer allegedly pushed him against the wall and

threatened him with the use of force [BR 03]. The officer was described as a male with light skin, bald, muscular, in his mid-30s.

None of the 73<sup>rd</sup> Precinct anti-crime officers who were working according to the Tour 3 Roll Call fit the description of the subject officer provided by § 87(2)(b) [NYPD 02, 04].

§ 87(2)(g)

According to the 73<sup>rd</sup> Precinct Command Log for January 14, 2016, Det. Ortega and Sgt. Francis of NARCBBN arrived at the 73<sup>rd</sup> Precinct stationhouse at 6:40 p.m. to process five arrests, and § 87(2)(b) was brought in 10 minutes later [NYPD 04]. According to the NARCBBN Tactical Plan for the day, Sgt. Francis and Det. Ortega were also working with Det. Sean Gillespie [NYPD 08]. Additionally, Det. Nino and Det. Nacelewicz were assigned to a prisoner van and transported the prisoners to the 73<sup>rd</sup> Precinct stationhouse according to their memo books [NYPD 12, 21]. Det. Ortega, Sgt. Francis, Det. Nino and Det. Nacelewicz denied pushing § 87(2)(b) against the wall or threatening him with the use of force [BR 33, 34, 38, 39]. Det. Gillespie's tour ended at 6:33 p.m., and he did not go to the 73<sup>rd</sup> Precinct stationhouse [BR 40]. According to NYPD records, Sgt. Francis is a white male, bald and heavy set and fits the description of the subject officer while the other officers from NARCBBN do not. § 87(2)(g)

§ 87(2)(b) also alleged that later, when he was being moved from one cell to another by two plainclothes officers, one of them allegedly told § 87(2)(b) "I'm gonna fuck you up." Both officers were described as white males in their 50s and § 87(2)(b) did not recall which officer actually made that statement.

Sgt. Francis, Det. Ortega, and Det. Nino denied going inside the cells and having any interaction with § 87(2)(b) [BR 33, 34, 38]. Det. Nacelewicz stated that he moved § 87(2)(b) from one cell to another and no other officers assisted him in doing so [BR 39]. However, both § 87(2)(b) and § 87(2)(b) stated that two officers in plain clothes moved § 87(2)(b) from one cell to another. Additionally, § 87(2)(b) could not recall which of the two officers made the alleged statement and described them the same way. § 87(2)(g)

### **Allegations Not Pleaded**

- § 87(2)(g)
- § 87(2)(g)

**Allegation A – Force: On January 14, 2016, Sergeant Eric Francis used physical force against § 87(2)(b)**

**Allegation B – Abuse of authority: On January 14, 2016, Sergeant Eric Francis threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that as he was being led inside the 73<sup>rd</sup> Precinct stationhouse, he heard a female officer say, “This guy is going to be a problem” [BR 10]. While § 87(2)(b) was being searched, his belt was removed and his pants and underwear fell off due to the fact that he had been wearing loose second-hand clothing. When § 87(2)(b) attempted to pull his clothing up, a plainclothes officer allegedly pushed him against the wall and said, “If you move, you’re gonna hit the ground hard. We know about you, you wanna fight, you wanna fight? We know you’re a tough guy.” § 87(2)(b)’s testimony was consistent throughout his CCRB statements [BR 03].

Sgt. Francis stated after he and his partners arrived to the 73<sup>rd</sup> Precinct stationhouse, he went to the back of the command to process the arrests [BR 33]. Sgt. Francis did not recall observing § 87(2)(b) being brought in and noted he did not assist PO Diaz in processing § 87(2)(b)’s arrest. Additionally, Sgt. Francis stated he did not have contact with any of the prisoners that day.

In her testimony to the CCRB, PO Beniquez stated that she and PO Deninno transported § 87(2)(b) to the command [BR 31]. While in the car, § 87(2)(b) kept asking why he was arrested. At the stationhouse parking lot, while being removed from the vehicle, § 87(2)(b) said, “Are you guys really going to arrest me? Well, watch what’s going to happen.” After PO Beniquez brought § 87(2)(b) inside the stationhouse, he started taking off his pants and underwear while his hands were rear cuffed. PO Beniquez and another uniformed officer from her command, whose name she could not recall, held § 87(2)(b)’s hands to prevent him from undressing. As a result, § 87(2)(b) became irate and started yelling profanities at the officers. PO Beniquez did not observe any plainclothes officers push § 87(2)(b) against the wall nor did she hear any officers threaten § 87(2)(b) with the use of force. After that, § 87(2)(b) was placed into the cell and PO Beniquez and her partner left.

When interviewed at the CCRB, PO Deninno stated that after he and PO Beniquez transported § 87(2)(b) to the stationhouse, he was taken to the desk by the cells where his pedigree was taken [BR 37]. PO Deninno did not recall § 87(2)(b)’s demeanor nor did he observe § 87(2)(b) get undressed. PO Deninno did not observe any plainclothes officers push § 87(2)(b) against the wall or threaten him with the use of force. Next, § 87(2)(b) was placed into the cell and PO Deninno and PO Beniquez left.

PO Diaz confirmed that § 87(2)(b) was transported to the stationhouse by PO Beniquez and PO Deninno [BR 21]. When PO Diaz arrived to the stationhouse, he observed § 87(2)(b) standing handcuffed by the wall in the general area and his pants and underwear were at his ankles. § 87(2)(b) asked to be left alone and said, “You guys are gonna pay for this.” PO Diaz stated that § 87(2)(b) took off his clothing himself. At that time, PO Beniquez and PO Deninno were near § 87(2)(b) and there were other officers in the vicinity as § 87(2)(b) was in the open area. PO Diaz searched § 87(2)(b) and took down his pedigree. PO Diaz did not observe any officers push § 87(2)(b) against the wall or threaten him with the use of force.

Sgt. Blowe stated that he and PO Diaz were the ones who transported § 87(2)(b) to the stationhouse [BR 30]. At the command, PO Diaz took § 87(2)(b) to the desk and searched him. Neither Sgt. Blowe nor other officers assisted PO Diaz in processing § 87(2)(b)'s arrest. Sgt. Blowe described § 87(2)(b)'s demeanor as calm and noted he was wearing his clothes at the time. Sgt. Blowe did not observe any plainclothes officers push § 87(2)(b) against the wall or threaten him with the use of force.

Sgt. John Coyle, who was assigned as a desk sergeant, went on his meal break at 6:40 p.m. and did not return until 7:45 p.m.; therefore he did not witness any of the allegations made by § 87(2)(b) [BR 23].

Sgt. Haug was covering Sgt. Coyle and was at the sergeant's desk when § 87(2)(b) was brought in by PO Diaz [BR 25]. Sgt. Haug did not recall whether any other officers assisted PO Diaz. § 87(2)(b) was yelling and using profanity, but Sgt. Haug did not recall the exact words § 87(2)(b) used. PO Diaz brought § 87(2)(b) to the sergeant's desk where he searched him and took down his pedigree. At that time, § 87(2)(b) was fully dressed and did not remove his clothing. Sgt. Haug did not observe any plainclothes officers use any force against § 87(2)(b) or threaten him with the use of force.

PO Aquino was at the cell desk when he observed PO Beniquez and PO Deninno bring § 87(2)(b) to the stationhouse [BR 22]. § 87(2)(b) was questioning the officers as to why he had been arrested, but was not physically resistant. When § 87(2)(b) was taken to the cell desk, PO Aquino observed § 87(2)(b) take off his pants and underwear. PO Aquino did not know why § 87(2)(b) removed his clothing and asked him why he did so. § 87(2)(b) did not reply and refused to put his clothes on. After that, PO Diaz arrived to the stationhouse and began to process § 87(2)(b)'s arrest. PO Diaz and PO Aquino advised § 87(2)(b) not to go inside the cells without his clothing, but § 87(2)(b) refused to pull his pants and underwear up. PO Aquino did not observe any plainclothes officers push § 87(2)(b) or threaten him with the use of force.

PO Aponte was at the sergeant's desk when § 87(2)(b) who seemed emotionally disturbed, was brought in by PO Diaz [BR 32]. PO Aponte did not recall whether any other officers assisted PO Diaz. § 87(2)(b) was screaming and was brought to the cell attendant's desk. PO Aponte went to the desk as well since he was relieving the cell attendant at the time. PO Aponte turned away, and the next time he looked at § 87(2)(b) his pants and underwear were on the floor. § 87(2)(b) said he took his clothing off as no one was paying attention to him. PO Aponte did not recall whether any other officers were near § 87(2)(b) at that time or whether any plainclothes officers pushed § 87(2)(b) or threatened him with the use of force.

Det. Ortega noted that § 87(2)(b) was acting belligerently and was cursing at the officers when he was brought into the stationhouse [BR 34]. At that time, § 87(2)(b) was fully dressed and handcuffed. Det. Ortega denied assisting PO Diaz in processing § 87(2)(b)'s arrest and did not know whether any of his partners did. Det. Ortega did not hear any officers threaten § 87(2)(b) with the use of force.

Det. Nino stated that after he and Det. Nacelewicz transported prisoners to the 73<sup>rd</sup> Precinct stationhouse, they lodged them in the cells and he went to the back room to process the arrests [BR 38]. Det. Nino did not observe § 87(2)(b) being brought in nor did he assist PO Diaz in processing § 87(2)(b)'s arrest. Det. Nino denied pushing § 87(2)(b) against the wall and threatening him with the use of force and did not observe or hear any other officers do so.



Det. Nacelewicz confirmed that he and Det. Nino brought their prisoners to the 73<sup>rd</sup> Precinct stationhouse; however, he did not recall where he went after lodging them in the cells [BR 39]. Det. Nacelewicz did not observe § 87(2)(b) being brought in and did not assist PO Diaz in processing his arrest.

§ 87(2)(g)

**Allegation C – Abuse of Authority: On January 14, 2016, an officer threatened § 87(2)(b) with the use of force.**

**Allegation D – Discourtesy: On January 14, 2016, an officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that the first cell he was placed in was filthy and was covered in urine [BR 10]. The cell had a toilet inside, but § 87(2)(b) was not aware whether it was functional. § 87(2)(b) did not feel comfortable sitting on the bench since he did not have any clothing from waist down, and after approximately 15 minutes he called for a supervisor and requested to be moved to another cell. § 87(2)(b) denied defecating on the floor of the cell. Two plainclothes officers came and moved § 87(2)(b) into another cell with other two prisoners. While moving § 87(2)(b) one of the officers allegedly told § 87(2)(b) “I’m gonna fuck you up.”

§ 87(2)(b) was in the second to the last cell when § 87(2)(b) who was not wearing any pants or underwear, was lodged into the back cell by himself [BR 17]. In approximately three minutes, water began to run on the floor of the cell area. § 87(2)(b) could not observe § 87(2)(b) from his cell and did not know what caused the flood. Two plainclothes officers came to the cell and became angry at § 87(2)(b) for overflowing the toilet. The officers entered § 87(2)(b)’s cell and walked § 87(2)(b) out of it. § 87(2)(b) was disputing with the officers about the circumstances of his arrest and was using profanity. However, § 87(2)(b) noted § 87(2)(b) was simply stating his point of view and was not being disrespectful to the officers. At some point, one of the officers told § 87(2)(b) “Shut the fuck up”. § 87(2)(b) was placed into the first cell with § 87(2)(b) and § 87(2)(b) and the officers left. § 87(2)(b) was still bare when he was placed in the cell.

Sgt. Francis, Det. Ortega, and Det. Nino denied entering the cells to check on their prisoners or § 87(2)(b) or hearing any plain clothes officer say, “I’m gonna fuck you up,” to § 87(2)(b) [BR 33, 34, 38].

Det. Nacelewicz stated that at 6:30 p.m., he arrived to the 73<sup>rd</sup> Precinct stationhouse as a part of his team and placed five prisoners into the cells. Det. Nacelewicz did not recall where he went after lodging the prisoners, but stated that sometime later he returned to the cells, possibly to fingerprint a prisoner. Det. Nacelewicz noted that he went to the cells by himself and nobody accompanied him. Det. Nacelewicz observed water covering the floor of the back area of the cells and approaching the cells his prisoners were in. Det. Nacelewicz went to the rear cell where he observed § 87(2)(b) with his foot placed in the toilet flushing the water, which caused the toilet to overflow. Det. Nacelewicz opened the cell door and told § 87(2)(b) to come out as he wanted to move him to another cell. § 87(2)(b) complied and did not say anything to

Det. Nacelewicz. § 87(2)(b) walked by himself to the front or the second cell in which Det. Nacelewicz placed him. Det. Nacelewicz did not recall whether § 87(2)(b) was wearing clothes at the time. Additionally, Det. Nacelewicz did not recall whether § 87(2)(b) was in handcuffs, but noted that he did not handcuff § 87(2)(b) when he was moving him. Det. Nacelewicz did not observe § 87(2)(b) urinating or defecating on the floor of the cell nor did he say, “I’m gonna fuck you up,” to § 87(2)(b).

PO Diaz explained that after § 87(2)(b)’s pedigree was taken, he together with PO Aquino and another uniformed officer from his command placed § 87(2)(b) into the rear cell [BR 21]. PO Diaz removed the handcuffs and shoe laces from § 87(2)(b) while instructing him to relax. PO Diaz left the cell area and went to the room adjacent to it. In approximately 10 to 15 minutes, PO Diaz was notified by the desk sergeant that § 87(2)(b) was flooding the cells and PO Diaz returned to the cells by himself. PO Diaz noted there were no plainclothes officers in the cell area at the time. PO Diaz believed that § 87(2)(b) was not moved from one cell to another and he did not hear any plainclothes officers say, “I’m gonna fuck you up,” to him.

Sgt. Haug noted that based on the fact that § 87(2)(b) was loud and angry, he arrived to the conclusion that § 87(2)(b) had to be separated from other prisoners and instructed PO Diaz to place § 87(2)(b) into the back cell by himself [BR 25]. After § 87(2)(b) was placed in the cell, he continued to yell and began to bang on the cells. In approximately five minutes, a plainclothes officer from NARCBBN, whose name he could not recall, informed Sgt. Haug that § 87(2)(b) placed his foot inside the toilet and it was overflowing. Sgt. Haug went into the cell area and observed water coming from the back cell approaching the second to the last cell. § 87(2)(b) was not wearing his underwear and was “80%” naked at the time. § 87(2)(b)’s clothing was in the hallway of the rear cells, and Sgt. Haug did not recall why it was there. Sgt. Haug instructed PO Diaz to assist other officers from NARCBBN in moving § 87(2)(b) to another cell, however, he did not recall which officers moved § 87(2)(b) as he left the cells by then. Sgt. Haug did not hear any plainclothes officers say, “I’m gonna fuck you up,” to § 87(2)(b). Sgt. Haug explained that there are several televisions at his desk that project video recordings of the interior of the cell area, but he could only observe the hallway of the back cells in them.

PO Aponte did not observe § 87(2)(b) being placed inside the cells, but knew he was lodged in the back cell and was screaming. PO Aponte did not observe § 87(2)(b) place his foot inside the toilet, but later found out from another officer that was how § 87(2)(b) flooded the cells. PO Aponte did not recall whether any plainclothes officers moved § 87(2)(b) from one cell to another nor did he hear any officers say, “I’m gonna fuck you up,” to him.

Sgt. Francis, Det. Ortega, and Det. Nino did not go to the cell area after they arrived to the 73<sup>rd</sup> Precinct stationhouse and stated that they processed their arrests in a separate room from where the cells are not visible [BR 33, 34, 38]. Det. Ortega stated, however, that he heard § 87(2)(b) yelling from the cells, but did not recall what exactly he was saying.

None of the officers mentioned above heard Det. Nacelewicz or any other officer say, “I’m gonna fuck you up” or observed Det. Nacelewicz move § 87(2)(b) from one cell to another. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Force: On January 14, 2016, Police Officer Christian Diaz used physical force against § 87(2)(b)**

§ 87(2)(b) stated that after he was moved to another cell with two other prisoners, he was still in handcuffs and bare from the waist down [BR 06]. The prisoners called for a supervisor since they did not want to be in the cell with § 87(2)(b). In approximately five minutes, PO Diaz returned to the cells by himself and told § 87(2)(b) he was making a lot of noise. PO Diaz led § 87(2)(b) out of the cell, pulling him backwards holding on to his handcuffs. PO Diaz instructed § 87(2)(b) to face the wall, and placed him against the wall. § 87(2)(b) complied and remained in the position PO Diaz placed him in. After that, PO Diaz tripped § 87(2)(b) over his leg to the left, which caused § 87(2)(b) to fall face down to the floor as he was in handcuffs and could not brace himself. Next, while holding § 87(2)(b) with his left hand, PO Diaz punched § 87(2)(b) to the right and back sides of his head. As a result, § 87(2)(b) sustained an injury to his lip, chin and teeth and started bleeding [See photographs, BR 04, 05, 06, 07, 08, 09]. § 87(2)(b) noted he did not provoke PO Diaz. The EMS was called and § 87(2)(b) was removed to § 87(2)(b) where, according to him, he received two stitches to his lip and skin glue to his chin.

§ 87(2)(b) stated that after § 87(2)(b) was taken out of the back cell by two plainclothes officers, the EMS arrived for him and he was placed by the copy machine in the beginning of the cell area [BR 17]. At that time, PO Diaz came in to the cells and observed the water on the floor. PO Diaz became angry and went inside the first cell, placed the handcuffs on § 87(2)(b) and pulled him out of the cell by the handcuffs. § 87(2)(b) was not physically resisting or threatening PO Diaz, but PO Diaz tripped § 87(2)(b) to his left and § 87(2)(b) fell face down to the floor. PO Diaz then stood over § 87(2)(b) and punched him to his head two to three times. § 87(2)(b) was lying on the floor and could not fight back as he was in handcuffs. § 87(2)(b) did not see where PO Diaz's punches landed exactly. Later, § 87(2)(b) observed that § 87(2)(b)'s eye and mouth were bleeding.

§ 87(2)(b) stated that she was in the separate part of the cells designated for females when § 87(2)(b) was brought in [BR 16]. § 87(2)(b) noted she could not observe what was happening in the male part of the cells, but heard other prisoners complain that § 87(2)(b) was bare and urinated and defecated on the cell floor. When § 87(2)(b) was taken out of the cell to be fingerprinted, she observed urine on the floor of the cells. Later, it was related to § 87(2)(b) by one of the prisoners, whose name she did not recall, that officers "tackled" § 87(2)(b) put him to the floor and handcuffed him.

EMTs § 87(2)(b) and § 87(2)(b) arrived to the 73<sup>rd</sup> Precinct stationhouse at 6:59 p.m. to treat § 87(2)(b) [NYPD 22]. Neither § 87(2)(b) nor § 87(2)(b) recalled observing the incident with § 87(2)(b) although § 87(2)(b) recalled there was water on the cell area floor that day [BR 26, 27].

§ 87(2)(b) noted he was also in the cells when he observed five to seven officers surround § 87(2)(b) at the front desk area attempting to place him in handcuffs [BR 41, 46]. § 87(2)(b) was wearing his underwear at the time, but his pants were down. § 87(2)(b) was pushed and fell face down to the floor. § 87(2)(b) was saying something about his arm, which made § 87(2)(b) conclude that § 87(2)(b)'s arm was hurt. The

officers then dragged § 87(2)(b) to the back area of the cells and at that time § 87(2)(b) observed that § 87(2)(b) was in handcuffs, had a bloody lip and a swollen eye. § 87(2)(b) stated he could not distinguish which officers pushed § 87(2)(b) and which dragged him, and how exactly they did that. Additionally, § 87(2)(b) stated there were several white male officers and one Hispanic together with one white and one Hispanic female. Some officers were in plain clothes and some in uniform, and § 87(2)(b) stated there was no black officer among them. § 87(2)(b) did not know what caused the officers' actions, but heard some of the officers say that § 87(2)(b) took off his clothing and was exposing himself. § 87(2)(b) noted that the back cells where § 87(2)(b) was taken were filthy and there was water coming out of some of them. § 87(2)(b) was not aware whether § 87(2)(b) caused any of the toilets to overflow and explained he had never met § 87(2)(b) before and did not know his name.

PO Diaz stated that after he lodged § 87(2)(b) in the back cell, in approximately 15 minutes, the desk sergeant notified him that § 87(2)(b) was flooding the cells [BR 21]. PO Diaz returned to the cell area by himself and observed water and sewage covering the entire floor of the cell area. PO Diaz noted there were no issues with the toilet in the individual cell that § 87(2)(b) was placed in. PO Diaz stated § 87(2)(b) was the one who flooded the cells, but he did not ask § 87(2)(b) how or why he did that. PO Diaz assumed § 87(2)(b) clogged the toilet by either putting his clothing or foot inside it. § 87(2)(b) was urinating and banging inside the cell. PO Diaz opened the cell door and attempted to take § 87(2)(b) out. § 87(2)(b) was panicking and looking aggressively at PO Diaz. PO Diaz could not specify what an aggressive look meant, but noted that § 87(2)(b)'s look related to him that he flooded the cells on purpose. PO Diaz told § 87(2)(b) he could have just called PO Diaz, to which § 87(2)(b) responded, "Fuck you". PO Diaz and § 87(2)(b) did not exchange any other words at that point. PO Diaz grabbed § 87(2)(b) by his left arm, and § 87(2)(b) pulled it away. PO Diaz grabbed § 87(2)(b)'s arm again and held on to it. At that moment, § 87(2)(b) slipped and fell face down to the floor. PO Diaz did not maintain his grip on § 87(2)(b)'s arm since he felt that he would have fallen down together with § 87(2)(b). § 87(2)(b)'s lip began to bleed, but PO Diaz did not observe any other injuries on § 87(2)(b). PO Diaz denied tripping § 87(2)(b) or punching him in the head. After that, PO Diaz placed § 87(2)(b) in handcuffs, which § 87(2)(b) did not resist. § 87(2)(b) was taken to the desk sergeant's desk where he waited for an ambulance to arrive. PO Diaz explained that the EMS was called since it had been determined that § 87(2)(b) was an emotionally disturbed person based on his behavior. PO Diaz stated that there were AIDED cards prepared for § 87(2)(b) as an EDP before, but the officer determined that only after § 87(2)(b) was taken to the hospital.

PO Aponte noted that at some point PO Diaz went inside the cells, but PO Aponte did not know why exactly [BR 32]. PO Aponte did not observe PO Diaz's interaction with § 87(2)(b) inside the cells and did not hear any sounds of struggle coming from the cell area. PO Aponte only learned from another officer that § 87(2)(b) flooded the cells. PO Aponte noted that one prisoner screamed to complain that § 87(2)(b) was undressed, but PO Aponte did not recall whether § 87(2)(b) attempted to urinate or defecate on the prisoners or on the floor. After § 87(2)(b) was removed from the cells, he was screaming and said he was going to report PO Diaz to IAB. At that time, PO Aponte observed blood either on § 87(2)(b)'s nose or mouth.

PO Aquino stated that when he returned to the stationhouse, at approximately 7:22 p.m., he observed § 87(2)(b) by the door to the rear cells with a bloody lip [BR 22]. § 87(2)(b)

§ 87(2)(b) was still undressed and PO Diaz and some officers from NARCBBN were standing by him at the time. PO Diaz told § 87(2)(b) “All you had to do was call me.” § 87(2)(b) replied, “Oh, you did this to me,” while looking at PO Diaz and stated he would call IAB.

Sgt. Haug stated that after § 87(2)(b) was placed in the cell with the other two prisoners, an officer from NARCBBN informed him that § 87(2)(b) was urinating on one of the prisoners [BR 25]. Sgt. Haug did not observe that himself, and directed PO Diaz to bring § 87(2)(b) to the desk and wait for the EMS to arrive. Sgt. Haug did not recall whether PO Diaz went to take § 87(2)(b) out by himself or with other officers. Sgt. Haug did not observe PO Diaz’s interaction with § 87(2)(b) inside the cells either in person or by looking at the video recording from the cells. Sgt. Haug did not observe PO Diaz use any force toward § 87(2)(b) while they were in the cell area. Sgt. Haug did not recall whether § 87(2)(b) was in handcuffs after he was brought out of the cells, but noted he was not wearing any clothes. § 87(2)(b) was yelling profanities towards the officers. After § 87(2)(b) was placed by the sergeant’s desk to wait for the EMS to arrive, he attempted to defecate on the floor several times and Sgt. Haug attempted to calm him down. At that time, Sgt. Haug observed a small laceration to § 87(2)(b)’s lip that was slightly bleeding. PO Diaz explained to Sgt. Haug that § 87(2)(b) slipped on water and his urine while PO Diaz was escorting him out of the cell. Sgt. Haug explained it was his decision to call the ambulance since he believed § 87(2)(b) was emotionally disturbed. Later, Sgt. Haug noted that PO Greco and PO Mays handcuffed § 87(2)(b) only when the EMS arrived. PO Greco and PO Mays accompanied § 87(2)(b) to the hospital, and later one of them informed Sgt. Haug that he received two stitches. Sgt. Haug’s CCRB testimony was consistent with his statement to IAB [BR 42, 43].

Sgt. Francis, Det. Ortega, and Det. Nino stated they were not in the cell area during the time these allegations occurred and did not witness PO Diaz’s and § 87(2)(b)’s interaction inside the cells [BR 33, 34, 38].

Det. Nacelewicz also stated he was not in cells at the time when the allegation occurred and did not witness PO Diaz’s and § 87(2)(b)’s interaction there [BR 39]. Later, when Det. Nacelewicz observed § 87(2)(b) being removed from the cells, he heard § 87(2)(b) state he was going to file a lawsuit against PO Diaz. Det. Nacelewicz did not observe any injuries on § 87(2)(b) and did not recall whether he was dressed at the time.

In his statement to the CCRB, PO Greco stated that at approximately 7:25 p.m., he and PO Mays arrived to the 73<sup>rd</sup> Precinct stationhouse regarding to Sgt. Haug’s assignment to transport § 87(2)(b) to the hospital [BR 29]. PO Greco observed § 87(2)(b) sitting on the floor against the wall outside the cell door next to the sergeant’s desk. § 87(2)(b) was rear cuffed and his pants and underwear were at his ankles. § 87(2)(b) was yelling and calling the officers “killers.” PO Greco and a plainclothes sergeant from his command pulled up § 87(2)(b)’s pants for him. § 87(2)(b)’s entire body was wet and there was water coming out of the cell area. § 87(2)(b) had a cut to his lower lip and chin. After they arrived to the hospital, the doctor asked § 87(2)(b) what had happened and § 87(2)(b) pointed at his injuries, at PO Greco and PO Mays and stated, “These cops are killers.” PO Greco interrupted § 87(2)(b) saying that a moment ago he was pulling his pants up for him, and § 87(2)(b) stopped PO Greco saying the officer was embarrassing him. Later, § 87(2)(b) calmed down and related to PO Greco and PO Mays that PO Diaz pushed him and he fell to the floor injuring his face. § 87(2)(b) also told the officers he caused the flooding in the cells himself. Sgt. Haug instructed PO Greco and PO Mays to advise

the doctors to psychiatrically evaluate § 87(2)(b) but the doctors refused to do so. PO Greco did not recall what § 87(2)(b) explained to the doctors when he was asked how he sustained his injuries.

§ 87(2)(b) was transported to § 87(2)(b) where he was diagnosed with a laceration of an oral cavity and an injured tooth [BR 05, 06, 07, 08] [PD 02, 04]. § 87(2)(b) received an Ibuprofen prescription and a Tetanus vaccine. Hospital records do not show any stitches being administered to § 87(2)(b)'s lip or medication provided for his chin.

According to the 73<sup>rd</sup> Precinct Prisoner Holding Pen roster for January 14, 2016, § 87(2)(b) was removed to § 87(2)(b) at 7:45 p.m., and was transported back to the precinct stationhouse at 11:30 p.m. [NYPD 06].

As per the 73<sup>rd</sup> Precinct Command Log for January 15, 2016, § 87(2)(b) was taken to Brooklyn Central Booking at 4:10 a.m. and was transported back to the stationhouse at 7:50 a.m. [NYPD 04]. It is also noted that § 87(2)(b) slipped on the floor while he was being removed from the cell and sustained a small cut on his lip.

Det. Nacelewicz noted in his memo book that § 87(2)(b) was transported to the BCB at 10:00 p.m. on January 14, 2016 [NYPD 21].

According to Patrol Guide 203-11, an officer may use the minimum amount of force necessary to protect himself/herself or the safety of others [BR 44]. However, officers must use force appropriate to the circumstances and may be disciplined if force is deemed excessive in a particular context. Police Department v. Mercado, OATH Index No. 467/00, Apr. 13, 2000 [BR 46].

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[REDACTED]

**Allegation F – Force: On January 14, 2016, Police Officer Christian Diaz used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that after PO Diaz punched him, the officer did not let § 87(2)(b) get up and dragged him to the desk by the back of his shirt [BR 10]. While dragged, § 87(2)(b) was on his back facing up. § 87(2)(b) waited for the EMS to arrive by the sergeant's desk.

§ 87(2)(b) noted that after punching § 87(2)(b) PO Diaz dragged § 87(2)(b) by his leg to the front area of the stationhouse while § 87(2)(b) was saying he would file a lawsuit against the officer [BR 17].

PO Diaz stated that after § 87(2)(b) fell, he handcuffed him and took him outside the cells to wait for the EMS to arrive [BR 21]. PO Diaz denied dragging § 87(2)(b) there by his shirt.

After Sgt. Haug instructed PO Diaz to remove § 87(2)(b) from the cells, he observed § 87(2)(b) walking by himself out of the cells and PO Diaz had his hand on § 87(2)(b)'s back [BR 25].

After PO Diaz went inside the cells, PO Aponte observed him drag § 87(2)(b) out of the cell by his shoulders to the cell desk and instructed § 87(2)(b) to wait there for the EMS. § 87(2)(b)'s feet were dragging on the floor and he appeared to be resisting PO Diaz since he was not walking by himself. § 87(2)(b) was handcuffed, bare from the waist down and his legs and feet were wet. PO Aponte did not recall whether § 87(2)(b) attempted to urinate or defecate while he was waiting for the EMS to arrive.

Sgt. Francis, Det. Ortega, and Det. Nino stated they were not in the cell area during the time these allegations occurred and did not witness PO Diaz's and § 87(2)(b)'s interaction inside the cells [BR 33, 34, 38].

Det. Nacelewicz stated that after he informed the desk sergeant that § 87(2)(b) flooded the toilet, he and two more officers from his command returned to the cells to remove one of their prisoners since he was going to be taken to the hospital [BR 39]. Det. Nacelewicz did not recall who these officers were. Det. Nacelewicz took another of his prisoners to fingerprint him and observed PO Diaz pull § 87(2)(b) by his arms backwards down the cell area aisle towards the sergeant's desk. § 87(2)(b)'s feet were dragging on the floor and PO Diaz was pulling § 87(2)(b)'s weight. § 87(2)(b) was moving around and was attempting to prevent PO Diaz from pulling him. Det. Nacelewicz did not know why PO Diaz was pulling § 87(2)(b) but noted he was uncooperative. Det. Nacelewicz did not recall whether § 87(2)(b) was in handcuffs either. Later, Det. Nacelewicz observed § 87(2)(b) sit by the sergeant's desk and yell. Det. Nacelewicz did not recall what § 87(2)(b) was yelling exactly and noted his pants were either on the floor or at his ankles at the time. Det. Nacelewicz did not observe § 87(2)(b) attempt to defecate.

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**Allegation G – Force: On January 16, 2016, Police Officer Christopher Coopersmith used physical force against § 87(2)(b)**

§ 87(2)(b) stated that on January 16, 2016 at approximately 8:00 a.m., he returned to the 73rd Precinct stationhouse to retrieve his personal belongings [BR 10]. § 87(2)(b) spoke to PO Coopersmith, who informed him that § 87(2)(b) had to come back to the stationhouse another time and talk to his arresting officer. PO Coopersmith did not explain to § 87(2)(b) why he had to talk to PO Diaz. § 87(2)(b) requested to speak to a supervisor, but PO Coopersmith denied his request. PO Coopersmith then stepped away from his desk and went to the vestibule of the stationhouse, where § 87(2)(b) was and pushed him in his chest twice saying, “Get out of my precinct, get out of my precinct”.

PO Coopersmith confirmed that he was seated at the desk of the 73rd Precinct stationhouse behind the window when § 87(2)(b) came in [BR 14]. § 87(2)(b) informed PO Coopersmith he wanted to retrieve his property and PO Coopersmith accessed § 87(2)(b)'s voucher in the computer. Upon reviewing the voucher, PO Coopersmith observed that in the body of the voucher PO Diaz wrote that § 87(2)(b)'s property was vouchered as arrest evidence. PO Coopersmith related that to § 87(2)(b) who became irate and started yelling. § 87(2)(b) refused to leave the stationhouse until his property was returned to him. PO Coopersmith denied stepping out from his post and talking to § 87(2)(b) in the vestibule. PO Coopersmith noted he did not have any physical contact with § 87(2)(b) and did not push him.

PO Vega stated he was the telephone switchboard operator and was seated next to the desk sergeant, Sgt. Haug, when § 87(2)(b) came to the stationhouse [BR 18]. PO Vega explained that his post is located behind the desk officer's seat. § 87(2)(b) entered the stationhouse and passed through the double doors, disregarding the sign “Authorized Personnel Only.” PO Coopersmith stepped away from his desk and asked § 87(2)(b) what he was doing. § 87(2)(b) told PO Coopersmith he was there to pick up his personal belongings, and PO Coopersmith instructed § 87(2)(b) to return to the waiting area and wait until he was acknowledged. PO Coopersmith obtained § 87(2)(b) identification and returned to his desk requesting PO Vega to check § 87(2)(b)'s voucher in the computer. Upon checking the voucher, PO Vega determined that § 87(2)(b)'s property was vouchered as arrest evidence and related that to PO Coopersmith. PO Coopersmith left his post again and went to the waiting area where he advised § 87(2)(b) he needed to come back another time and talk to PO Diaz. § 87(2)(b) became upset and started shouting. PO Coopersmith told § 87(2)(b) to leave multiple times, and eventually, § 87(2)(b) left. However, PO Vega was occupied by his duties and did not see how § 87(2)(b) left. PO Vega did not observe PO Coopersmith put his hands on § 87(2)(b) and did not hear any sounds of struggle coming from the waiting area.

Sgt. Haug noted he was a desk sergeant on the day when § 87(2)(b) returned to the stationhouse to retrieve his personal belongings [BR 25]. When § 87(2)(b) entered the stationhouse, he was yelling profanities toward the officers. Sgt. Haug assumed that § 87(2)(b)



§ 87(2)(b) was distressed as the process of obtaining his property was not quick enough for him and did not recall whether there was an issue with § 87(2)(b)'s property having been vouchered as arrest evidence. Sgt. Haug did not recall which officer § 87(2)(b) spoke to nor did he recall § 87(2)(b) speaking to either PO Coopersmith or PO Vega. Sgt. Haug did not hear any officers instruct § 87(2)(b) to leave the stationhouse and did not observe PO Coopersmith pushing § 87(2)(b) in the chest.

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Squad: 3

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date